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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/037,325

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Harry W. Eberle III

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11/13/2008

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EXAMINER

GARCIA, ERNESTO

ART UNIT

PAPER NUMBER

3679

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/037,325	<b>Applicant(s)</b> EBERLE, HARRY W.	
	<b>Examiner</b> ERNESTO GARCIA	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 29-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Drawings***

It has come to the examiner's attention that the drawings filed on May 24, 2005 have not been acknowledged as being accepted. The examiner regrets this was not caught earlier due to the filing of the notice of appeal and the appeal brief at the same time thus superseding the amendment to the drawings.

The drawings were received on May 24, 2005. These drawings are accepted. However, the drawings contain a few discrepancies.

The drawings are objected to because the shading of the horizontal beams 45, 47 should be deleted as the shading appears as cross-section and misleading whether the boards are actually shown in cross-section in Figures 7 and 8 when the brief summary of the drawings indicates that Figures 7 and 8 are actually end views. Given that Figure 7 is an end view, shouldn't the cross-hatching of the anchoring device 1 in Figure 7 be deleted as no plane would intersect the anchoring device thus rendering a

cross-section? Further, reference characters “2”, “4”, and “6” in Figure 2 should be deleted.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “57” has been used to designate both a horizontal support beam (Figure 7) and a slot (Figure 7).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 33-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 33, the recitations “a plurality of support boards” in line 2 and “said decking boards being situated atop said support boards” in lines 5-6 does not comply with the written description requirement. Note that Figure 7 shows horizontal beams 45, 47, i.e., the plurality of decking boards, a top a joist or joist beam 59 (page 32, lines 4-5). The original specification rather mentions a support board at page 2, line 16, but there is no indication that there is a plurality of support boards and there is no discussion of an embodiment with these features. Accordingly, this is a new matter rejection.

Regarding claims 34-38, the claims depend from claim 33 and therefore do not comply with the written description requirement.

***Claim Rejections - 35 USC § 102***

Claims 29, 31, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Great Britain patent, GB-1,350,754 to Child.

Regarding claim 29, the British patent discloses, in Figure 10, an anchoring device consisting essentially of a substantially flat horizontal top element **A10** (see marked-up attachment provided in the last Office action), at least one substantially vertical support member **A20**, and a substantially flat horizontal bottom element **A30**. The top element **A10** has a top view configuration including two sides **A2** and a predetermined first width **A3** as measured side to side. The first width **A3** is measured at a maximum width between the sides **A2**. The top element **A10** has an imaginary center line **A4**. The support member **A20** is attached to an underside **A6** of the top element **A10** along the center line **A4** and the support member **A20** extends downwardly therefrom. The support member **A20** has two sides **A7** and a predetermined second width **A8** as measured side to side at a maximum width. The bottom element **A30** has a flat bottom view configuration, which includes sides **A31**, and having a generally trapezoidal shape, and a predetermined third width **A11** as measured side to side at a maximum width at a trapezoidal base **B1**. The first width **A3** is greater than the second width **A8** and the third width **A11**. The third width **A11** is

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greater than the second width **A8**. The device is made of molded plastic material (column 4, lines 72-84).

Applicant is reminded that the anchoring device can be adapted to main the top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position the bottom element upon a support board which two adjacent boards rest for attachment of the anchoring device to the support board for anchoring and support of the two adjacent boards.

Further, for the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising". See, e.g., PPG, 156 F.3d at 1355, 48 USPQ2d at 1355. See MPEP 2111.03.

Regarding claim 31, the two sides **A2** of the top element **A10** are symmetric relative to one another.

Regarding claim 32, the two sides **A2** of the top element **A10** are parallel to one another.

***Claim Rejections - 35 USC § 103***

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al., 5,704,181, in view of Aschheim, 6,012,256.

Regarding claim 29, Fisher et al. disclose, in Figure 3, an anchoring device comprising a substantially flat horizontal top element **14b**, at least one substantially vertical support member **14c**, and a substantially flat horizontal bottom element **14a**. The top element **14b** has a top view configuration including two sides **A2** (see marked-up attachment provided in the last Office action). and a predetermined first width **A3** as measured side to side. The first width **A3** is measured at a maximum width between the sides **A2**. The top element **14b** has an imaginary center line **A4**. The support member **14c** is attached to an underside **A6** of the top element **14b** along the center line **A4** and the support member **14c** extends downwardly therefrom. The support member **14c** has two sides **A7** and a predetermined second width **A8** as measured side to side at a maximum width. The bottom element **14a** has a flat bottom view configuration which includes sides **A10** and having a generally trapezoidal shape, and a predetermined third width **A11** as measured side to side at a maximum width at a trapezoidal base **B1**. The first width **A3** is greater than the second width **A8** and the third width **A11**. The third width **A11** is greater than the second width **A8**.



However, Fisher et al. fail to disclose the device made of molded plastic material. However, Fisher et al. suggest at column 6, lines 2-13, that changes in material may be made and since the grout mixture would change depending upon the anchoring device, i.e., the beam, being used, one would be motivated to use a plastic anchoring device suitable with a grout mixture to be used with plastic for making a play house. Furthermore, Aschheim teaches in column 1, lines 22-27, that anchoring device, i.e., the sustainer, can be made of plastic as an alternative material for sustaining episodic loads. Therefore, as taught by , it would have been obvious to one of ordinary skill in the art at the time the invention was made to. Given the modification, it is known that plastic material is capable of having a metal fastener driven through.

Applicant is reminded that the anchoring device can be adapted to main the top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position the bottom element upon a support board which two adjacent boards rest for attachment of the anchoring device to the support board for anchoring and support of the two adjacent boards.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al., 5,704,181, in view of Aschheim, 6,012,256, as applied to claim 29, and further in view of Naccarato, 6,442,908.

Regarding claim 30, Fisher et al., as modified above, fail disclose the vertical support member **14c** having recesses with support columns located therebetween. Naccarato et al. teach, in Figs. 4 and 5, a vertical support member **14c** having recesses **15** to promote optimal flow of grout material through the support member (col. 5, lines 29-35). Therefore, as taught by Naccarato et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to include recesses in the vertical support member to promote optimal flow of grout material through the support member. Applicant is reminded that columns will be inherently located between the recesses as shown in Figure 3 of Naccarato et al.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Child, GB-1,350,754, in view of Curtis, Jr. 4,154,172.

Regarding claim 30, Child, as discussed fails to disclose the vertical support member having recesses with support columns located therebetween. Curtis, Jr. teaches in Figure 2 and 4, a support column **17'**, **21** having recesses to allow the insertion of a fastener therethrough (col. 2, lines 30-33, and col. 2, line 68, to column 3, line 4. Therefore, as taught by Curtis, Jr., it would have been obvious to one of ordinary skill in the art at the time the invention was made to include recesses on the vertical support member to allow the insertion of a fastener. Given the modification, support columns would have been located between the recesses in general.

Claims 33 and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al., 6,363,677, in view of Livezey, Jr., 3,045,294.

Regarding claim 33, Chen et al. disclose, in Figure 5, a decking system comprising boards **A20** (see marked-up attachment provided in the Office action dated December 29, 2004) and an anchoring device **A26**. Each of the boards **A20** has a top **A21**, a bottom **A22**, two sides **A23** and two ends **A24**. At least one groove **A25** is located along one of the sides **A23**. The anchoring device **A26** consists essentially of a substantially flat horizontal top element **A1**, at least one substantially vertical support member **A5**, and a substantially flat horizontal bottom element **A9**. The top element **A1** has a top view configuration including two sides **A2** and a predetermined first width **A3** as measured side to side. The first width **A3** is measured at a maximum width between the sides **A2**. The top element **A1** has an imaginary center line **A4**. The support member **A5** is attached to an underside **A6** of the top element **A1** along the center line **A4** and the support member **A5** extends downwardly therefrom. The support member **A5** has two sides **A7** and a predetermined second width **A8** as measured side to side at a maximum width. The bottom element **A9** has a flat bottom view configuration, which includes sides **A10**, and having a generally trapezoidal shape, and a predetermined third width **A11** as measured side to side at a maximum width at a trapezoidal base **B1**. The first width **A3** is greater than the second width **A8** and the third width **A11**. The third width **A11** is greater than the second width **A8**. The device is made of molded plastic material capable of having a metal fastener driven through (col. 7, lines 56-60).

However, Chen et al., fails to disclose a plurality of support boards and the decking boards **A20** situated being atop the support boards **A20**. Livezey, Jr. teaches, in Figures 1 and 3, a decking system comprising support boards 25 and decking boards 10 atop the support boards 25 to resiliently support the decking boards 10 and provide a dead air space intermediate a sub-floor and the decking boards 10 (col. 3, lines 25-34; col. 4, lines 27-30). Therefore, as taught by Livezey, Jr., it would have been obvious to one of ordinary skill in the art at the time the invention was made to further provide Chen et al. with support boards and situate the decking boards of Chen et al. atop the support boards to resiliently support the decking boards and provide a dead air space intermediate a sub-floor and the decking boards.

Applicant is reminded that the anchoring device can be adapted to main the top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position the bottom element upon one of the support boards on which two adjacent boards rest for attachment of the anchoring device to the support board for anchoring and support of the two adjacent boards.

Further, for the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as

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equivalent to "comprising". See, e.g., PPG, 156 F.3d at 1355, 48 USPQ2d at 1355.

See MPEP 2111.03.

Regarding claim 35, Chen et al. disclose the two sides **A2** of the top element **A1** are symmetric to one another.

Regarding claim 36, Chen et al. disclose the groove **A25** establishes an upper half **A30** of each of the boards **A20** above the groove **A25** and a lower half **A31** of each of the boards **A20** below the groove **A25**. The upper half **A30** has a greater width than the lower half **A31**. Compare widths **A32** and **A33**.

Regarding claim 37, Chen et al. disclose the boards **A20** are made of material selected from the group consisting of synthetic polymers, at least partially foamed synthetic polymers, wood, wood composite, and combinations thereof (col. 4, lines 22-50).

Regarding claim 38, Chen et al. disclose the two sides **A2** of the top element **A1** are parallel to one another.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al., 6,363,677, in view of Livezey, Jr., 3,045,294, as applied to claims 33 and 35-38, and further in view of Curtis, Jr. 4,154,172.

Regarding claim 34, Chen et al., as discussed fails to disclose the vertical support member having recesses with support columns located therebetween. Curtis, Jr. teaches in Figure 2 and 4, a support column 17',21 having recesses to allow the insertion of a fastener therethrough (col. 2, lines 30-33, and col. 2, line 68, to column 3, line 4. Therefore, as taught by Curtis, Jr., it would have been obvious to one of ordinary skill in the art at the time the invention was made to include recesses on the vertical support member to allow the insertion of a fastener. Given the modification, support columns would have been located between the recesses in general.

### ***Response to Arguments***

Applicant's reiterated arguments filed July 23, 2008 have been fully considered but they are not persuasive. Applicant has presented the same arguments to claims 29-32 as found in the appeal brief December 31, 2007 and have already been addressed in the last Office action by the examiner.

Applicant's arguments with respect to claims 33-38 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roeder, 1,241,885, shows an anchoring device or decking system that can be oriented either for flooring, ceilings, or walls thus suggesting that all of the patents of record that show a wall, ceilings, or flooring can be respectively be used for other purposes other than what they show.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. In particular, the new recitations "and a plurality of support boards" in claim 33, line 2, and "said decking boards being situated atop said support boards" in claim 33, lines 5-6, necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30AM-6:00PM. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.



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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/E. G./

Examiner, Art Unit 3679

November 13, 2008

/Daniel P. Stodola/  
Supervisory Patent Examiner, Art Unit 3679